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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/786,057	06/26/2001	Roberto Alcantara Martins Zucchetti	32286R006	6856

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EXAMINER

OSTRUP, CLINTON T

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 12/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/786,057

Applicant(s)

ZUCCHETTI ET AL.

Examiner

Clinton Ostrup

Art Unit

1614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 December 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-18.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: In response to applicants assertion that "skin structures", "micronutrients of the skin" and "sensorial agents" are readily understood by those skilled in the art and fully comply with 35 U.S.C. 112, second paragraph, the examiner respectfully disagrees. The metes and bounds of what constitutes "skin structures", "micronutrients of the skin", and "sensorial agents" is not readily apparent to the skilled artisan and although the skilled artisan would appreciate the two examples of "skin structures", one example of "skin micronutrients", and two examples of "sensorial agents" as such, the skilled artisan would not recognize what does and what does not constitute "skin structures", "micronutrients of the skin", and "sensorial agents". Moreover, as discussed in the previous Office Action, the claims are interpreted in light of the specification; limitations from the specification are not read into the claims.

With respect to applicants' argument that the term "associated with" is adequate and clear to the skilled artisan, and fully complies with 35 U.S.C. 112 because it is used in the claim to mean a mixture where the specific emulsifiers cited in claim 5 are used together with one neutralizer compound selected from triethanolamin, soybean lectin and combinations thereof, is not convincing. First the term rejected is "associated to", not "associated with." Secondly, the term does not clearly describe "associated to" as being a mixture where the specific emulsifiers cited in claim 5 are used together with one neutralizer compound selected from triethanolamin, soybean lectin and combinations thereof.

Applicants' arguments in regard to the 35 U.S. C. 103(a) rejection of claims 1-18 as being unpatentable over Rinaldi et al 5,891,470 and further in view of Huc et al., 5,395,620 are not convincing. Applicants argue that their invention "as defined by claim 1, describes a composition for enhancing the action of Vitamin A on the cellular activity of an individual." However, the recitation describes a composition for enhancing the action of Vitamin A on the cellular activity of an individual has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. Furthermore, these claims are all drawn to a composition and future intended uses of compositions are not given patentable weight in claims to compositions.

Applicants' further argue that the combination of Rinaldi and Huc would not have rendered the claimed composition obvious because Rinaldi teaches compositions wherein vitamin A and C are impregnated into gels that are not compatible with water and Huc teaches microcapsules that are biologically compatible and therefore, the microcapsules of Huc would be degraded by the compositions of Rinaldi. The examiner respectfully disagrees. First, unlike applicants' assertion that the microcapsules of Rinaldi would have to be de-impregnated to separate the vitamin A and vitamin C, these are starting materials, which, like the examiner stated in the previous Office Action, could be modified to be microencapsulated using biodegradable microcapsules as taught Rinaldi et al. And the motivation for doing so would be the expectation of obtaining a composition comprising microencapsulated active ingredients which are not toxic, improve bioavailability and protect the microencapsulated active principle. It would have also be obvious to substitute known ingredients which are being used for their art recognized purpose such as, skin structures, micronutrients, emollients, sun protection factors, emulsifiers, and thickeners for another, because of the reasonable expectation of obtaining compositions with similar chemical properties. In response to applicants argument that the vitamin C and vitamin E would permeate to their respective hydrophilic and hydrophobic environment, this argument is not convincing because these properties are well known in the art and the skilled artisan would take preventative measures to ensure such problems would not arise, i.e., forming emulsions, adding stabilizers, etc.

FREDERICK KRASS
PRIMARY EXAMINER
GROUP 1600


